

SENATE, No. 2329

[Senate, March 18, 2010 - New draft of Senate, No. 68 reported from the committee on Children, Families and Persons with Disabilities.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT REGARDING FAMILIES AND CHILDREN ENGAGED IN SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

1 **SECTION 1.** The General Laws as appearing in the 2006 official edition are hereby
2 amended by adding after chapter 6A section 16G the following new section:

3 Section 16H. Community-based services for families and children

4 1. *Whereas* families in the Commonwealth whose children are truant, runaway and acting in a
5 fashion that interferes with their parent's ability to adequately care for and protect said children
6 are families in crisis; and

7 *Whereas* the issues facing said children and families are complex and the services which
8 would best assist such families are not always available from a single agency or department of
9 the Commonwealth and the collaboration among multiple public and private agencies and offices
10 is required to ensure that all children and families receive the services they need to succeed; and

11 *Whereas* the current efforts to help said children and families lack accountability and
12 consistency; and

13 *Whereas* services are not consistently available in all communities;

14 *Therefore*, it shall be the policy of the Commonwealth to develop a flexible, consistent,
15 and accountable system of community-based programs to assist said children and families.

16 2. It is the intent of the General Court to create an accountable, community-based system
17 that provides consistent services throughout the Commonwealth to address the needs of families
18 and children in crisis by providing them with an array of resources. The goal of said system is to
19 preserve and strengthen families while ensuring the healthy behavioral, social and educational
20 development of the child. These services shall focus on creating a stable environment and
21 strengthening the family as a whole while emphasizing parental responsibility. These services
22 shall also focus on assisting children who are at risk of dropping out of school. Nothing in this
23 act is intended to abrogate the responsibility of the education system to provide educational
24 services as required by state and federal law.

25 Said community-based system shall provide the family and child with immediate
26 responses for the stabilization of the family, as well as to connect the family to additional
27 services in the community through referrals and advocacy. The services provided to the families
28 and children involved shall be provided on a continuum of increasing intensity with the goal of

keeping the child out of the juvenile justice and child protection systems. The system shall include a mechanism for the collection and analysis of information which will enable the Commonwealth to evaluate the effectiveness of services and to identify gaps in services. It is the intent of the General Court to reserve judicial intervention for those children and families who require services beyond said community-based services in order to achieve stabilization and resolution.

3. For the purpose of this Section the following words shall have the following meanings:

‘Child requiring assistance’: a child between the ages of 6 and 18 who repeatedly runs away from the home of his parents, legal guardian, or custodian or repeatedly fails to obey the lawful and reasonable commands of his parents, legal guardian, or custodian, thereby interfering with said parent’s, legal guardian’s, or custodian’s ability to adequately care for and protect said child or repeatedly fails to obey the lawful and reasonable regulations of his school or who is habitually truant;

“Community-based services”: services, including coordination of services, that are designed to assist families with children requiring assistance so that, where appropriate, such children will be able to: continue residing with their families in their home communities; continue as students in their community schools; strengthen relationships with their families.

“Community Service Agency” : a community-based organization providing services under contract with the Commonwealth, whose function is to facilitate access to and ensure coordination of services for families with children with serious emotional disturbance who require or are already utilizing multiple services, or are involved with multiple child-serving systems including, but not limited to, the juvenile justice system, department of mental health,

and special education, as agreed upon under the settlement dated August 29, 2006 entered into by the parties of Rosie D. et al v. Romney civil action No. 01-30199-MAP filed in the United States District Court.

‘Family with children requiring assistance’: the parents, guardians, custodian, siblings, and any other relatives or caretakers responsible for a child between the ages of 6 and 18 who need assistance from state, local, or private agencies, or providers of social, educational health, mental health, or behavioral health services in order to adequately care for and protect the child;

‘Habitually truant’: a school-aged child not otherwise excused from attendance in accordance with the lawful and reasonable regulations of his school who fails to attend school for more than 8 school days in a quarter;

‘Secretary’: the secretary of the Executive Office of Health and Human Services.

4. (a) Subject to appropriation or availability of third party reimbursement, the secretary shall:

- (i) develop a model for delivery of community-based services to families with children requiring assistance which shall form a basis of a network of child and family service programs developed in this section. The purpose of the network of community-based services program shall be to assist families so that children will be able to continue residing with their families in their home communities; assist families to enable children to continue as students in their community schools; strengthen the relationships between children and families; and provide coordinated, comprehensive, community-based services for children at

73 risk of dropping out of school, delinquency, or engaging in behaviors
74 which impede the likelihood of their leading healthy, productive lives.
75 The secretary may enter into contracts with the Community Service
76 Agencies (CSAs), local schools, other local public agencies, private
77 organizations, or medical or mental health care providers who shall act
78 as community-based service centers, to implement the network and
79 provide services which are within their capacity. The community-based
80 service centers shall be encouraged to subcontract with other local
81 providers as needed to provide the full complement of services required
82 under this section.

83 (ii) make grants for the coordination of community-based services which
84 may include outreach, intake, screening, assessment and referral. In
85 awarding the grants, the secretary shall seek to promote efficiency and
86 access to existing services. Grants may be awarded to existing networks
87 of community-based services. Referrals may be provided for services,
88 including but not limited to: eligibility determination, behavioral health,
89 medical, counseling, safety, education, learning disabilities,
90 employment, mentoring, family and parent support, civic engagement
91 and community service, after school and out-of-school opportunities,
92 residential programs, non-residential programs, crisis management and
93 case management.

94 (iii) pilot alternative systems to address the problem of children running
95 away from their parents, legal guardians, or custodians. Two grants

shall be awarded for runaway treatment and prevention programs, one in an urban location and one in a rural location. Grants may award funding for up to five years subject to demonstration of effectiveness and the submission of annual reports to the secretary;

(iv) develop standards necessary to achieve and maintain on a statewide basis comprehensive and integrated community-based services for children and families;

(v) monitor and provide technical assistance to providers of community-based services;

(vi) adopt a standard intake screening and assessment tool to evaluate all families and children seeking community-based services which identifies the family's strengths, resources, and service needs such as mental health, behavioral health, or substance abuse treatment, basic family shelter, clothing and food needs, child care needs, health insurance status, legal issues, education placement, and child protection;

(vii) create a data collection system for use by programs within the network of child and family service programs developed pursuant to this section which maintains the privacy of clients served, assists programs and the executive office of health and human services in addressing the needs of the population to be served, collects information related to, among other things, the insurance status and benefit coverage of clients served,

income documentation as needed to apply a sliding fee scale for payment or waiver of payment for services, and other information that may assist the program and the secretary in providing services, identifying service needs and gaps, and evaluating the effectiveness of community-based services.

- (viii) establish a network of child and family service programs throughout the commonwealth to provide community-based services to families with children requiring assistance.

(b) The secretary shall issue requests for proposals for the provision of community-based services. Proposals must demonstrate expertise in assisting children and families who are at risk of contact with the juvenile justice system or the child protection system and program staffing which meets the credentialing and caseload criteria as defined by the secretary. Proposals shall also require that applicants submit:

- (i) A plan for development, implementation and coordination of services as required under this section for families from public and private providers;.
- (ii) A plan for the establishment of a local advisory board which, shall focus on the needs of families and children at risk of involvement in the juvenile justice system and the child protection system. The advisory board shall include: representatives from school districts, police officers, juvenile probation officers, district attorneys, attorneys who represent children and parents, mental health clinicians, behavioral

health providers, parents and youth. The advisory board may also include local religious organizations, representatives of local businesses, higher education, social service agencies, public health agencies and other persons with experience in assisting youth and families in crisis. Membership shall be broadly representative of the racial ethnic and economic diversity of the community. The local advisory boards may, where necessary to facilitate work in communities, create similarly constituted work groups for each municipality in the service area;

- (iii) Periodic evaluation of the success in achieving program goals and a process for making adaptations and improvements based on evaluation information.

5. (a) Community-based services shall be available to children between the ages of 6 and 18 who are habitually truant or children between the ages of 6 and 18 who run away from the home of their parents, legal guardian, or custodian or refuse to obey the lawful rules of their parents, legal guardian, or custodian or repeatedly fail to obey school rules and to families whose children engage in such behaviors.

(b) Whenever the staff of the program offering community-based services determines that a family seeking or referred for services for a child has significant and complex medical needs which cannot be met by the program or where the child's behavior presents a significant risk of harm to the child himself, the family or the community, the child and family shall be referred to other services pursuant to subsection 4 of this section.

162 (c) Where a youth has been charged with a delinquency offense or is an adjudicated
163 delinquent, eligibility for participation in community-based services shall be determined by the
164 program administrator after a review of the facts surrounding the alleged offense by a team
165 consisting of: a community-based services caseworker, probation officer, family members and
166 the counsel representing the child in the delinquency matter.

167 (d) Where the child is in the custody of the department of children and families and
168 residing in an out-of-home placement, eligibility for participation in community-based services
169 shall be determined by the program administrator after a review of the facts surrounding the
170 placement by a team consisting of the community-based services caseworker, the department of
171 children and families caseworker, a responsible adult with whom the child has an ongoing
172 connection, and if the custody is based on an order in any proceeding under chapter 119, any
173 counsel representing the child in that proceeding.

174 (e) Where a child or family is denied access to community-based services for reasons
175 other than those described in this section, the program shall provide the child and his parent,
176 legal guardian, or custodian a written explanation of reasons for exclusion and the identification
177 of other community-based services and resources available to them.

178 (f) When a child or family is denied services pursuant to this section, the program shall
179 contact the child and his parent, legal guardian, or custodian in person or by telephone within
180 two weeks after the denial decision to determine if the other appropriate services have been
181 obtained and whether or not community-based services are now appropriate. The program shall
182 provide to the child and his parent, legal guardian, or custodian a notice in a form acceptable to

the juvenile court stating that the family is not eligible for community-based services and listing the reasons for ineligibility.

6. (a) A child or family may seek assistance from a community-based services program directly and without referral.

(b) Employees of the departments of children and families or youth services may make referrals to Community-Based Service Centers as part of a case plan.

(c) Voluntary referrals to community based services may be made by any professional who is working with the family or child(ren).

(d) Except as provided herein, a school administrator shall refer a child to community-based services at the same time that the administrator notifies the student and his parent, legal guardian, or custodian that the student will be expelled for failure to comply with the lawful and reasonable rules of the school. After providing the process that is due the student, including an expulsion hearing if requested, the school administrator shall consider the outcome of the community based service center referral if the student provides that information to the school.. Provided that when a school administrator refers a child for habitually truant behavior, it must be shown that the school, child, and family have completed a department of education certified truancy program, if such a program is available at the school. Whenever a child or family seeks assistance for habitually truant behavior, the program staff shall assist the family in gaining access to the child's school's department of education certified truancy program.

7. Community-based services shall include, but are not limited to:

- 203 (i) program representatives available to respond to requests for service 24 hours a
204 day, 7 days a week;
- 205 (ii) initial response to referral or request for services by a family or child and
206 stabilization of any crisis presented within a reasonable time, not to exceed 24 hours, so as to
207 assure the safety and well being of the child and family;
- 208 (iii) assessment and screening of each person requesting services and, if possible, all
209 family members residing in the household using the standard intake tool as established by the
210 secretary pursuant to paragraph 4(a)(vi);
- 211 (iv) assignment of a case manager to each family upon assessment;
- 212 (v) creation of a family service plan, which includes but is not limited to: strength-
213 based assessment and statement of family needs presented; services and treatment to be provided
214 by the community-based services program or to which the family and child will be referred that
215 address the identified needs, assistance with obtaining special education evaluation and services,
216 assistance with insurance coverage issues, and timeframes for achieving the plan objectives. The
217 service plan shall be reviewed and agreed upon by the family before implementation;
- 218 (vi) data collection in a format which protects the privacy of the individuals seeking
219 services and permits the evaluation of the effectiveness of the program;
- 220 (vii) compilation and dissemination to the general public of information about family
221 support resources and services available in the community;
- 222 (viii) crisis intervention residential placements for children for up to 72 hours;
- 223 (ix) voluntary respite residential placement of the child for up to 21 days; and
- 224 (x) mediation or alternative dispute resolution, including restorative justice programs.

225 8. (a) Participation in community-based services shall be pursuant to a voluntary
226 agreement of the parent, legal guardian, or custodian and the child. Families or children may
227 terminate their involvement at any time.

228 (b) Services may be provided for 120 days. After the initial 120 day period families or
229 children and the community-based services program case manager may agree to extend services
230 for up to an additional 90 days.

231 (c) Covered services shall be billed to the insurance provider for the client.

232 (d) The program shall advise the parents, legal guardian, or custodian that they may be
233 responsible for co-payments for covered services and for contributing to the cost of non-covered
234 services for the child or family. Allowable rates for services not covered by insurance, including
235 the portion for which parents will be held responsible, shall be set by the secretary and
236 periodically adjusted as needed to meet actual costs.

237 (e) In the absence of the consent of a parent, legal guardian, or custodian, respite care
238 may be provided to a child pursuant to the provisions and subject to the limitations of chapter
239 119 section 23 paragraph 7.

240 9. (a) Each family shall have a case manager and a case staffing team. The case staffing
241 team shall include, but is not limited to, the primary providers of the services to the child and
242 family, the case manager and a representative of the child's school district.

243 (b) (i) The case manager shall be responsible for working with the family to
244 develop a family service plan, agreed upon by the family and the case
245 manager, that outlines the delivery of services. The family service plan

shall be reviewed if there is cause to believe the continuation of services is no longer appropriate because the child has complex medical needs which cannot be met by the program or the child's behavior presents a significant risk of harm to the child himself, the family or the community. The case manager, the family and child shall periodically review the progress towards achieving the objectives of the plan and may make adjustments to the plan if necessary.

(ii) The case staffing team shall work with the family to address barriers that may prevent the family and child from participating in and benefiting from services, ensure the continued progress of the family service plan and shall address any issue that may be preventing the family from continuing to participate in and benefit from services. The case staffing team shall periodically review the family service plan with the family and may make recommendations for additional services.

(c) The case manager, case staffing team, family and child may, upon reviewing the progress towards achieving the objectives of the plan, terminate the case as indicated by successful or substantial achievement of the objectives of the plan. The parent, legal guardian, custodian or child who is over the age of 16 or any other member of the case staffing team may make a written request that the case manager convenes a resolution meeting at any time if the member finds that doing so is in the best interest of the family or child.

10. (a) Not more than 110 days after the assessment and screening of a child and family referred to or requesting community-based services, or 10 days prior to any extension of services

granted under paragraphs c and d of this section, the case manager shall convene a resolution meeting with the case staffing team to assess whether the goals of the family service plan have been achieved or if further services are in the best interest of the family and child. After the meeting the case manager shall document the resolution of the case as follows:

- (i) that the family and or child will benefit from additional community-based services; or
- (ii) that it is unlikely the family and child will benefit from additional community-based services at this time and the case is discharged; or
- (iii) that the family failed to cooperate with the service plan and the case is discharged; or
- (iv) that the public or private agencies designated in the plan to provide specific services did not provide those services and the case is discharged; or
- (v) that the presenting behaviors are resolved and the case is discharged.

(b) Within 7 days after meeting, the case manager shall provide the parent, legal guardian, or custodian with a written report that details the reasons for the decisions made at the resolution meeting. The report shall contain a notice in a form acceptable to the juvenile court stating that community-based services have concluded and whether or not the case manager believes it is likely that the child and family would benefit from further services.

(c) If the family, child and case manager agree to extend services, then the services shall be extended for an additional 90 days.

(d) If the family was referred to community-based services by a court or a probation officer, then services may be extended for additional 90 day periods at the agreement of the court or probation officer and the family.

11. (a) The report and any documentation of services provided to the family and child shall not be public records. Statements made by the family and child while receiving services from the program shall be treated as confidential. Such statements may not be used in school disciplinary proceedings or in any court proceeding without the written consent of the person making the statement.

(b) Any person offering community-based services to children under this program shall be required to report suspected physical or emotional abuse or neglect of a child pursuant to General Laws Chapter 119 Section 51A.

(c) Notwithstanding any provision to the contrary, in the absence of specific written directive from the child and or member of the family who is receiving service, information about the case, including interactions with service providers and protected health information services, may be shared among members of the case team as needed to coordinate treatment and provide appropriate case management.

12. There shall be an advisory council appointed by the secretary, which shall advise the secretary on creation, operation, and effectiveness of the community-based services program. Members shall include the commissioners or their designees of the departments of public health, mental health, developmental services, children and families, youth services, transitional assistance, elementary and secondary education, early education and care, and public safety, the child advocate, the director of the office of Medicaid or his designee, the

commissioner of probation or his designee, the chief justice of the juvenile court or his designee, a district attorney, members of the bar who represent children in juvenile court proceedings, a designee of the committee for public counsel services, an education advocate, representatives of urban, suburban, and rural municipal police departments and school districts, providers of service to children and families, parents, and at least 2 young adults who have participated in a community-based services program.

13. The secretary shall report annually on February 1 to the joint committee on children, families and persons with disabilities and the house and senate committees on ways and means and the child advocate on the progress of the community-based services program.

SECTION 2: Chapter 69 of the General Laws is hereby amended by adding after section 1N the following new section:

Section 1O. Within three years of the effective date of this act, the department shall establish a discretionary grant program to assist schools in planning and implementing truancy preventions programs which meet the certification requirements established pursuant to section 1P of Chapter 69.

SECTION 3: Chapter 69 of the General Laws is hereby amended by adding after section 1O the following new section:

Section 1P. The Department of Education shall promulgate regulations establishing a truancy prevention program certification process. The regulations shall include requirements that the truancy prevention program evaluate the level of out-of-school support for students and families, and address the conditions that may make students more likely to become truant, including previously unidentified special needs, bullying and harassment. School districts shall

establish a truancy prevention program which meets the requirements for certification by the department.

SECTION 4:Chapter 119 of the General Laws is hereby amended by repealing Sections 39E to 39J, inclusive, and adding the following new sections:

Section 39K. Definitions

“Child requiring assistance”, a child below the age of eighteen who repeatedly runs away from the home of his parents or legal guardian, or repeatedly fails to obey the lawful and reasonable commands of his parents or legal guardian, thereby interfering with said parent’s or legal guardian’s ability to adequately care for and protect said child, or repeatedly fails to obey the lawful and reasonable regulations of his school, or who is a habitually truant;

“Family requiring assistance”, the parents, guardians, siblings and any other relatives or caretakers responsible for a child between the ages of 6 and 18 who need assistance from state, local, or private agencies or providers of social, educational, health, mental health, or behavioral health services in order to adequately care for and protect the child;

“Habitual truant”, a school-aged child, not otherwise excused from attendance in accordance with the lawful and reasonable regulations of his school, who willfully fails to attend school for more than 8 school days in a quarter;

“Parent”, includes a legal guardian or other person legally responsible for a child’s care.

Section 39L. Jurisdiction

The Juvenile court department has original and exclusive jurisdiction over any proceeding commenced under section 39N alleging that a family or child requires assistance. The

jurisdiction of the Boston juvenile court for the subject matter of this section shall extend to the territorial limits of Suffolk county.

Section 39M. Nature of the Proceedings

1. Proceedings pursuant to sections 39K to 39X, inclusive, shall not be deemed criminal proceedings and any record of these proceedings, including the filing of a request for assistance and creation of a docket, shall not be entered in the Criminal Offender Record Information System.

2. Notwithstanding any general or special law to the contrary, no record pertaining to the child involved in the proceedings shall be maintained or remain active after the request for assistance is dismissed. The identity and record of any child for which a request for assistance is filed shall not be submitted to the criminal history systems board, criminal offender record information system, court activity record index or any other criminal record information system.

3. Proceedings pursuant to sections 39K to 39X, inclusive, shall be confidential and not be open to the public.

Section 39N. Request for Assistance

1. A proceeding to determine whether or not a child or family requires assistance is originated by the filing of a request for assistance, stating the petitioner's information and belief:

(a) that the child repeatedly runs away from the home of his parents or legal guardian or repeatedly fails to obey the lawful and reasonable commands of his parents thereby resulting in said parent's inability to adequately care for and protect said child, or that the child is habitually truant or repeatedly fails to obey the lawful and reasonable regulations of his school;

(b) that the child was under the age of 18 at the time the specified acts took place,

(c) specific acts on which the request for assistance is based and the time and place they are believed to have occurred;

(d) when the petitioner is a school district, the request for assistance shall also include:

(i) if the request for assistance states that a child is habitually truant, a statement of the actions taken by the school district to comply with its obligations under its truancy prevention program certified pursuant to chapter 69, section 1O and to improve the school attendance of the child. The request for assistance shall also state whether or not the child and his family have participated in the truancy prevention program.; and

(ii) if the request for assistance states that a child has repeatedly failed to obey the lawful and reasonable regulations of the school, a statement of the specific steps taken by the school to improve the child's conduct.

(e) when the petitioner is a parent, whether they have applied for or received services from a community-based services program under Section 16H of chapter 6A; and

(f) that the child and family require assistance.

2. The following persons may originate a proceeding under this section:

(a) a police officer, but only if the request states that the child repeatedly runs away from the home of his parents, legal guardian, or custodian;

(b) a parent;

(c) a school district, but only if the request states that the child is habitually truant or repeatedly fails to obey the lawful and reasonable regulations of his school;

398 3. (a) When a request for assistance is presented to the clerk for filing by a parent or a
399 police officer, the clerk shall determine whether or not the child and family named in the petition
400 have received services from a community service program created under section 16H of chapter
401 6A. If the child and family have participated in such services, the clerk shall attach to the
402 petition the notice of conclusion of community-based services as provided for in chapter 6A,
403 section 16H(11)(b) or notice of ineligibility as provided for in chapter 6A, section 16H(6)(f). If
404 the child and family have not participated in such services the clerk shall provide to the petitioner
405 the option of referring the child and family to the program designated by the secretary of the
406 executive office of health and human services to provide community-based services in the
407 juvenile court district where the child resides.

408 (b)(1) If the petitioner is a parent, the clerk shall offer to contact the community-based
409 services provider on the parent's behalf in order to complete a referral to such services. If the
410 parent declines to be referred to such services, the clerk shall attach to the request for assistance
411 the parent's signed statement that the parent does not wish to be referred to such services and
412 that the parent understands the nature of services available through the court process, the manner
413 in which those services will be delivered, the nature of the orders which the court may issue and
414 the possibility of changes in custody of the child. The clerk may accept the request of assistance
415 for filing if said documents are attached.

416 (2) If the petitioner is a police officer, the clerk shall offer to contact the
417 community-based services provider in order to complete a referral to such services. The
418 clerk may accept a written statement of the reasons for the officer's belief that the referral
419 to community-based services prior to filing the request for assistance would present a risk
420 of harm to the child. The clerk shall then i) immediately contact the designated

community-based services to provide notice that a request for assistance has been prepared for filing, ii) create a docket for the matter and iii) request that the chief probation officer, or his designee, conduct an immediate inquiry and report to the clerk, or a judge if the clerk is not available with advice on how to proceed to obtain assistance for the child. After considering such advice the clerk may accept the request for assistance for filing.

Section 39O Notice

1. Except as provided in subsection 2, on the filing of a request for assistance pursuant to this section, the court shall cause a copy of the request for assistance and a summons to be issued, requiring the child and each parent to appear at the court at a time and place named to address the request for assistance

2. In proceedings commenced by a parent, the court shall, at the time the request is filed, notify the parent in writing of the time and place that the request for assistance will be heard to ensure the parent has a copy of the request for assistance. The court is not required to issue a summons to either parent in such a case if the parents are living together. If the parents are not living together, the court shall cause a copy of the request for assistance and a summons to be issued, requiring the child and the parent who did not initiate the request for assistance to appear to address the request for assistance at the court at a time and place named..

3. A copy of the request for assistance served or provided under subsection 1 or 2 shall be accompanied by a notice that, in the event that the court deems it necessary to place the child in the care and custody of the department of children and families, said parent may be named as a respondent in any child support proceeding brought in connection with the child's care

4. Unless service of the summons required by this section is waived in writing, such summons shall be served by a constable or police officer, either by delivering it personally to the person to whom addressed, or by leaving it with a person of proper age to receive the same, at the place of residence or business of such person, and said constable or police officer shall immediately make return to the court of the time and manner of service.

Section 39O ½ Determination of probable cause that a child and family requires assistance; expungement.

Whenever a request for assistance is filed, the clerk, or a judge if the clerk is not available, shall hold a hearing as soon as possible, but not later than 15 days after the creation of a docket. At that hearing the clerk, or a judge if the clerk is not available, shall receive the recommendation of the probation officer and receive evidence from the petitioner and the child. The clerk, or the judge shall determine i) whether or not there is probable cause for a determination that a child and family are in need of assistance and ii) whether it is in the best interest of the child for the matter to proceed to a fact finding hearing. The clerk or judge shall then either i) dismiss the request for assistance, or ii) refer the child and family to a probation officer for the preliminary inquiry under section 39R. When a request for assistance is dismissed under this section, the court shall enter an order directing the expungement of any records of the claimant maintained by the clerk, the court, the criminal history systems board, the court activity record index, and the probation department that directly pertain to the this request for assistance.

Section 39P Scheduling the Fact Finding Hearing

At the conclusion of the probable cause hearing required by section 39O1/2, the clerk shall set a date for a fact finding hearing no more than 90 days from the date the request for assistance was filed. If at any time prior to the fact finding hearing the parents, child, petitioner

and probation officer agree, the fact finding hearing may be postponed for an additional 90 days after the expiration of the initial 90 day period.

Section 39Q Appointment of Counsel

1. When the request for assistance is filed the child shall be informed that he has a right to counsel at all hearings. At the time the request for assistance is filed, that court shall ensure that if said child is not able to retain counsel, the court shall appoint counsel for said child. The court shall appoint counsel for the child at the time the request for assistance is filed. The clerk shall cause a copy of the request for assistance and notice of the time and place of the fact finding hearing to be delivered to counsel at the time of appointment.

2. When the request for assistance is filed, each parent or legal guardian of the child shall be informed that he has the right to participate as a party in any proceeding under sections 39K to 39X involving his child and that he has the right to counsel at any hearing or proceeding regarding custody of his child. If said parent or legal guardian is financially unable to retain counsel, the court shall appoint counsel for said parent or legal guardian.

3. The court shall determine whether the parent or legal guardian of a child alleged to require assistance is indigent. If the court determines that the parent or legal guardian is not indigent, the court shall assess up to a \$1000 fee against the parent or legal guardian to pay for the cost of counsel appointed for the child. If the parent or legal guardian is determined to be indigent but is still able to contribute toward the payment of some of said costs, the court shall order the parent or legal guardian to pay a reasonable amount toward the cost of counsel appointed for the child.

Section 39R Preliminary Inquiry by Probation

1. When requested by the court or a clerk the chief probation officer or his designee shall conduct a preliminary inquiry to determine whether in his opinion the best interests of the child and family require that crisis intervention services be provided to the child and family.

The probation officer in his discretion may:

(a) refer the family and child to a community-based services program in the community where the child resides; the probation officer may confer with the provider of community-based services to resolve the situation which formed the basis of the request for assistance;

(b) refer the child to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services;

(c) conduct conferences with the child, the child's family and the petitioner for the purpose of effecting adjustments or agreements which are calculated to resolve the situation which formed the basis of the request for assistance. Information obtained by the probation officer may be used in the present proceeding but it is otherwise confidential and may not be used in school disciplinary proceedings or other court proceedings;

(d) if the child or his parents fail to participate in good faith with the referrals or conferences arranged by the probation officer or if the probation officer is not able to refer the child or his parents to an appropriate public or private organization which is willing and able to provide appropriate services, the probation officer shall so certify in writing and present these findings to the court.

2. (a) The probation officer shall gather information concerning the child and family which in both substance and format is compatible with and complementary to the information gathered by programs providing community-based services pursuant to section 16H of chapter 6A, including but not limited to the insurance status and coverage and other information that may

assist the commissioner of probation and the court in evaluating the availability and effectiveness of services for children who are the subjects of requests for assistance pursuant to this section.

(b) The commissioner of probation shall establish a system to collect data regarding requests for assistance made and how they are resolved under sections 39K through 39X. Said system shall maintain the privacy of clients served, assist the court in addressing the needs of the population to be served, collect information related to, among other things the racial and ethnic identity of the child, the insurance status and coverage of clients served, the length of time a child is receiving assistance from a probation officer, the identity of any public or private organization to whom a probation officer has referred a child or family for services; and other information that may assist the commissioner and the court in evaluating the availability and effectiveness of services for children who are the subjects of requests for assistance pursuant to this section.

(c) The Commissioner of Probation shall report annually to the Child Advocate, the house and senate committees on ways and means, joint committee on children, families and persons with disabilities and the joint committee on the judiciary on the assistance provided by probation officers to children and families under Sections 39K to 39X. The report shall be filed on October 1 of each year and shall include for each juvenile court district: the number of children and families receiving assistance, their racial and ethnic identity, as identified by the child and family members, an analysis of the services provided and an identification of gaps in services available, the status or resolution of each request for assistance filed in the previous year, and the numbers of children who are the subject of a request for assistance and also charged with a delinquency matter in the previous year. The report shall exclude information that

identifies or allows others to identify any child or family who is the subject of a request for assistance.

3. Conferences and referrals arranged under this section may extend for a period not to exceed 120 days from the date that the request for assistance was filed, unless the parent, child and petitioner voluntarily agree in writing to a continuation of such conferences or referrals for an additional period not to exceed 90 days from the expiration of the original period. Upon the expiration of the initial 90 day period, or of such additional 90 day period, the request for assistance may be dismissed and the child and his parents discharged from any further obligation to participate in such conferences and referrals, or a fact finding hearing shall be held.

Section 39S Custody, Failure to Appear

If, after a hearing at which the child is represented by counsel, the court finds that a child alleged to require assistance by reason of repeatedly failing to obey the lawful and reasonable commands of his parent is likely not to appear at the fact finding hearing or at the disposition hearing, the court may order the child to be released upon such terms and conditions as it determines to be reasonable or may place the child in the temporary custody of the department of children and families. Prior to the court granting temporary custody to the department of children and families, the court must make a written certification and determination that it is contrary to the welfare of the child to be in his home, and that the department of children and families has made reasonable efforts to prevent removal of the child from his home or the existing circumstances indicate that there is an immediate risk of harm or neglect which precludes the provision of the preventative services as an alternative removal.

An order placing a child with the department under this Section shall be valid for no more than 15 days without the child being brought again before the court for a hearing on whether the

order should be continued for another 15 day period. If the court decides to extend the order, it shall note in writing the detailed reasons for its decision. An order under this section may be in effect for no more than 45 days total.

A child who is the subject of a request for assistance may not be confined in shackles or similar restraints or in a court lockup facility in connection with any proceedings pursuant to Sections 39K through 39X.

Section 39T Withdrawal of Request for Assistance

The petitioners may, withdraw the request for assistance at any time prior to a hearing to determine the disposition of a request for assistance. A probation officer may at any time recommend to the court that the request for assistance be dismissed upon a showing that dismissal is in the best interests of the child.

Section 39U Fact Finding Hearing

1. The court shall hold a fact finding hearing in which it shall receive evidence from the petitioner, the parent, the child, a representative from the community-based services program, if involved with the family, and the probation officer. At any hearing held to determine whether a child and family require assistance, the child and his attorney shall be present and the parents or legal guardian shall be given an opportunity to be heard. The petitioner who files the request for assistance shall bear the burden of presenting evidence proving that the child and family require assistance.

2. At the fact finding hearing the court shall review any notice of termination of community-based services. The court shall consider any available documentation of diligent attempts to provide appropriate services and determine whether such efforts or services provided

were sufficient. With the consent of the parent(s) and child the court may consider any written reports from service providers which would otherwise be subject to confidentiality or privilege. The court may refer the child and the parent to participate in community-based services regardless of whether or not the child and parents have previously used community based services.

3. The court shall either:

(i) dismiss the request for assistance because the circumstances which led to the filing of a request for assistance have been resolved or the court finds that the child and family will not benefit from the assistance being offered;

(ii) adjourn the hearing for up to 60 days because it finds that the interests of the child would best be served by continued informal assistance, in which case the court shall, with the consent of the child and his parent, refer the child to a probation officer or refer the child and family to the designated program for additional community-based assistance; or

(iii) If the court finds the allegations in the request for assistance have been proved at the fact finding hearing beyond a reasonable doubt, it may find that the child and family named in such request for assistance to be a child and family requiring assistance and schedule a hearing for disposition

4. No statements made by a child, family member, or by any other person during the period of inquiries, conferences, or referrals may be admitted at any hearing without the consent of the child or the family member who made the statement.

Section 39V Disposition Conference and Hearing

1. Upon making a finding that a child and family require assistance after a fact finding hearing , the court shall convene a conference of the probation officer who conducted the

601 preliminary inquiry, a representative from the community-based services program, if involved
602 with the family, the petitioner, a representative from the child's school, the child's parent and his
603 attorney, the child and his attorney, a representative of the department of children and families, if
604 involved with the family, and any other person who may be helpful in determining the assistance
605 to be offered to the child and family. The probation officer shall present written
606 recommendations and other persons at the conference may present written recommendations to
607 the court to advise the court on appropriate treatment and services for the child and family,
608 appropriate placement for the child, and appropriate conditions and limitations of such
609 placement.

610 At the conference and subsequent hearing on disposition, the child and his attorney shall
611 be present and the parents or legal guardian and the petitioner shall be given an opportunity to be
612 heard. The court may receive evidence as to the best disposition from all persons who
613 participate in the conference and any other person who may be helpful in determining an
614 appropriate disposition.

615 2. The court shall then conduct a dispositional hearing. The court, taking into
616 consideration the evidence admitted at the hearing, the report of the probation officer, and the
617 physical and emotional welfare of the child, may make any of the following orders of
618 disposition:

619 (a) subject to any conditions and limitations the court may prescribe, including provision
620 for medical, psychological, psychiatric, educational, occupational and social services, and for
621 supervision by a court clinic or by any public or private organization providing counseling or
622 guidance and for any other services deemed appropriate by the court, permit the child to remain
623 with his parents;

(b) subject to such conditions and limitations as the court may prescribe, including, but not limited to provisions for services deemed appropriate by the court, including but not limited to services described in clause (a), place the child in the care of any of the following:

(i) a relative, or other adult individual who, after inquiry by the probation officer or other person or agency designated by the court, is found to be qualified to receive and care for the child; or

(ii) a private charitable or childcare agency or other private organization, licensed or otherwise authorized by law to receive and provide care for such children;

(c) subject to the provisions of sections 32 and 33 and with such conditions and limitations as the court may recommend, place the child in the custody of the department of children and families. If the court chooses to place the child in the custody of the department then at the same time, the court shall consider the provisions of section 29C and shall make the written certification and determinations required by said section 29C. When the court has placed a child in the custody of the department, then the department:

(i) may not refuse out-of-home placement of a child if the placement is recommended by the court provided that the court has made the written certification and determinations required by said section 29C;

(ii) may not refuse out of home placement when requested by the child if there is a substantiated history of abuse or neglect in the home by the parent or legal guardian;

(iii) subject to clauses (i) and (ii), shall direct the type and length of such out-of-home placement;

(iv) subject to clauses (i) and (ii), shall give due consideration to the recommendations of the court. Whenever the department decides not to carry out the recommendations of the court regarding placement and treatment of the child it shall present the reasons for its decision and the alternative plan for treatment and placement in writing to the court.

(d) The court may issue an order directing any state agency to provide particular services to the family and child including but not limited to those services described in clause (a). If the agency is not able to comply with the order directing services then the agency shall provide to the court a written statement of the reasons why it is unable to provide those services. A copy of the statement shall be sent to the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities and the office of the child advocate.

Section 39V1/2 Prohibition on placements with the department of youth services or in locked facilities

1. Notwithstanding the provisions of subsection 2 (d) the court may not order the child to be placed in the custody of the department of youth services.

2. A child found to require assistance shall not be placed in a locked facility or any facility designated or operated for juveniles who are alleged to be delinquent or who have been adjudicated delinquent. However, such child may be placed in a facility which operates as a group home to provide therapeutic care for juveniles regardless of whether juveniles adjudicated delinquent are also provided care in such facility.

Section 39W Duration of Assistance

1. Any order of disposition under Section 39V shall continue in force for not more than 120 days; provided, however, that the court which entered the order may, after a hearing, extend

its duration for up to three additional periods, each such period not to exceed 90 days, if the court finds that the purposes of the order have not been accomplished and that such extension would be reasonably likely to further those purposes. The child shall have the opportunity to present evidence and rebut evidence presented at any extension hearing.

2. No order shall continue in effect after the eighteenth birthday of a child named in a request for assistance.

Section 39X. Custodial Protection

1. (a) A child may be taken into custodial protection for engaging in the behaviors described in section 39N, only if such child has failed to obey a summons issued pursuant to section 39O, or if the law enforcement officer initiating limited custody has probable cause to believe that such child has run away from the home of his parents or legal guardian and will not respond to a summons.

(b) After an officer has taken a child into custodial protection, the officer shall immediately notify the parent or other person legally responsible for the child's care, or the person with whom he is domiciled, that he is under the custodial protection of the officer.

(c) After making every reasonable effort to give notice under paragraph (b), the officer shall:

- (i) release the child to the custody of his or her parent or other person legally responsible for his or her care upon the written promise, without surety, of the person to whose custody the child is released that he will bring the child to the program designated to provide community-based services for the geographic region which constitutes the district of the juvenile court department within which the child was taken into

693 custodial protection or in which the child resides, at a time and place
694 specified in writing; or
695 (ii) forthwith and with all reasonable speed take the child directly, and
696 without first being taken to the police station house, to the program
697 designated to provide community-based services for the geographic
698 region which constitutes the district of the juvenile court department
699 within which the child was taken into custodial protection or in which
700 the child resides,; or
701 (iii) release the child to a representative of the department of children and
702 families, if the law enforcement officer has reason to believe that the
703 child is or has been in the care or custody of such department; or
704 (iv) take the child directly to the juvenile court in which the act occasioning
705 the taking into custodial protection occurred, provided that the officer
706 affirms on the record that he or she attempted to exercise the options
707 identified in paragraphs (i), (ii), and (iii) of this subdivision, was unable
708 to exercise these options, and the reasons therefore.

709 (d) In the absence of special circumstances, the officer shall release the child to his
710 parents or other person legally responsible for his care in accord with paragraph (c)(i).

711 (e) A child may not be securely detained in a police station or town lockup. At no time
712 shall a child be held in any locked facility..

713 (f) Notwithstanding the foregoing requirements for placement, any such child who has
714 been taken into custodial protection shall, if necessary, be taken to a medical facility for
715 treatment or observation.

SECTION 5. Notwithstanding any general law to the contrary the secretary of the executive office of health and human services and the commissioners of departments of public health, mental health, developmental services, children and families, youth services and transitional assistance shall enter into memoranda of understanding among themselves and with the department of elementary and secondary education, office of the commissioner of probation, the juvenile court, municipal police departments and school districts to provide coordination, delivery, and funding of services to children and families who, pursuant to the provisions of section 16H(7)(b) of chapter 6A of the General Laws, are not eligible for community-based services established pursuant to section 16H of chapter 6A.

SECTION 6. The secretary of the executive office of health and human services shall pilot a program to address the unique needs of girls who run away from their parents and legal guardians.

SECTION 7. The department of elementary and secondary education shall pilot a truancy prevention program using a restorative justice format in at least one urban high school in the Commonwealth. The program shall include the use of healing circles which allow family, neighborhood and school community members to be present; a reparative board, comprised of peers and led by an adult; family group counseling, and mediation or alternative dispute resolution with the child, family members and school representatives. The program shall be designed to address the underlying causes both in and out of school which led to truancy. The department shall evaluate the effectiveness of the program in preventing truancy and enhancing the child's academic performance and report the results of that evaluation to the board of elementary and secondary education, the house and senate committees on ways and means, joint committee on education and the department of elementary and secondary education.

SECTION 8. Chapter 741 of the Acts of 1965 is hereby amended by striking out, in line 3 of the first paragraph, the word “sixteen” and inserting in place thereof the following word:-
eighteen.

SECTION 9. Chapter 741 of the Acts of 1965 is hereby amended by striking out, in line 4 of the second paragraph, the word “sixteen” and inserting in place thereof the following word:-
eighteen

SECTION 10. Five years after the effective date of this act, the Child Advocate shall report to the governor, the president of the senate, the speaker of the house, the senate and the house committees on ways and means, and the chairs of the joint committee on children, families and persons with disabilities on the needs of families whose children are truant, runaways, or whose conduct interferes with their parents ability to adequately care for and protect them. The report shall examine: (i) the community-based service system; (ii) the differences in service delivery throughout the state; (iii) the need for immediate response to stabilize a family in crisis and to connect the family to services in their own community; and (iv) the collection and analysis of information, or lack thereof, needed to evaluate and identify gaps in service to such children and families throughout the commonwealth. The report shall also review and make recommendations, as appropriate, with respect to system-wide improvements that may increase the effectiveness of the care and services provided to such children and their families and suggested legislative and regulatory changes. The report shall be made public.

SECTION 11. The department of mental health, in collaboration with the department of youth services and the department of public health shall conduct a comprehensive review of the mental health and substance abuse service needs of adolescents in the care of or detained in the commonwealth through the order of a juvenile court, including without limitation juveniles

762 detained in the department of youth services or in the custody of the department of children and
763 families or receiving services from the department of mental health, the court clinics, probation
764 or otherwise and including without limitation any such departments, offices, agencies or
765 instrumentalities of the commonwealth, and any private organizations or agencies operating
766 under arrangement with departments or agencies of the commonwealth. To complete said
767 review the department of mental health, the department of youth services, and the department of
768 public health shall solicit input from the office of probation, the department of children and
769 families , the department of elementary and secondary education, the juvenile court, the juvenile
770 court clinics, the committee for public counsel services, the department of mental retardation, the
771 division of insurance,, the division of medical assistance, the Massachusetts Association of
772 District Attorneys, at least one individual representing the interests of parents and families, at
773 least one advocate for juvenile justice, at least one representative of the service provider
774 community, and at least one representative of the Massachusetts Association of Health Plans.

775 Said review shall be for purposes of identifying the following:

- 776 (i) existing and proposed models of alternatives to detention, within and outside the
777 commonwealth, of providing mental health and substance abuse services to
778 juveniles in the care of the department of youth services; community resources
779 and other dependencies which affect the appropriateness and effectiveness of
780 models of services designed to avoid placement of children in a locked facility;
781 and data demonstrating the relative efficacy, cost –effectiveness, and effect on
782 public safety of alternative models;
- 783 (ii) unmet mental health and substance abuse needs of juveniles within the juvenile
784 court systems of the commonwealth, including an explicit comparison of the best

practices and models identified in paragraph a of this section with services and models available in the commonwealth;

(iii) recommendations for addressing unmet needs, including without limitation through the court clinics of the juvenile courts, and through contracting by the department of mental health for community based services through community providers, or through consortia of community providers, local government agencies and others operating in congruence with local courts involved in the juvenile justice system.

(b) within 60 days after the effective date of this act, the department shall post to its external website, for 30 days public comment, a proposed work plan to gather information necessary to prepare the report required by this section, in consultation with clinical, philanthropic and advocacy organizations for children, and providers of mental health and substance abuse services for minors. The proposed work plan shall be directed to submit a final report to the legislature and the governor no later than 270 days after the effective date of this act.

(c) Within 90 days after the effective date of this act, the department shall post its final work plan on its external website.

(d) Within 210 days after the effective date of this act, the department shall post on its external website, for public comment, a draft report responsive to this section.

(e) Within 270 days after the effective date of this act, the department shall post on its external website, a final report responsive to this section, including a summary of all public comments received, and responses to such comments. The department shall also that day provide a copy to the governor, the president of the senate, the speaker of the house of representatives,

807 the chairs of the joint committees of mental health and substance abuse, and children, families
808 and persons with disabilities and the legislative mental health caucus.

809 **SECTION 12.** Section 16H(b)(i) shall take effect 12 months after the effective date of
810 this legislation.

811 **SECTION 13.** Section 16H(b)(ii) shall take effect 24 months after the effective date of
812 this legislation.

813 **SECTION 14.** Section 16H(b)(iii) shall take effect 24 months after the effective date of
814 this legislation.

815 **SECTION 15.** Section 16H(b)(iv) shall take effect 24 months after the effective date of
816 this legislation.

817 **SECTION 16.** Section 16H(b)(v) shall take effect 24 months after the effective date of
818 this legislation.

819 **SECTION 17.** Section 16H(b)(vi) shall take effect 24 months after the effective date of
820 this legislation.

821 **SECTION 18.** Section 16H(b)(vii) shall take effect 24 months after the effective date of
822 this legislation.

823 **SECTION 19.** Section 16H(b)(viii) shall take effect 36 months after the effective date of
824 this legislation, to enable the Secretary to engage in the planning process required to establish the
825 service delivery network provided therein.